

Issue: Qualification/Methods/Means/Training; Ruling Date: November 5, 2003; Ruling #2003-140; Agency: Department of Corrections; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections
EDR Ruling # 2003-140
November 5, 2003

The grievant has requested a ruling on whether her April 25, 2003 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that she has not been afforded an equal training opportunity by management. For the following reasons, this grievance does not qualify for hearing.

FACTS

The grievant is a Corrections Officer at a DOC correctional facility. She asserts that she has been passed over for training opportunities. The grievant claims that management informed her that if she desired elective training, she must submit her request in writing via a training request form. According to the grievant, she has submitted several such requests but has not been offered additional training. In contrast, the grievant claims that management has selected for training other DOC employees who never submitted training requests.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ Thus, all claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out, including selection for training, generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied.² The grievant essentially claims that management has misapplied or unfairly applied its training policy by denying her an equal opportunity³ for training and by not consistently adhering to its own stated

¹ Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c), pages 10-11.

³ In asserting that she has been denied equal training opportunities, the grievant bases her claim on alleged nepotism as opposed to civil rights based status (e.g. race, age, gender, etc.).

institutional practice of directing employees to submit written requests to be considered for training.

For the grievant's claim of misapplication or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. The applicable written policy in this case appears to be DOC Policy 5-50, the agency's Training and Development Policy. The grievant has not identified any provision of this policy that the agency has allegedly failed to follow. Accordingly, this Department cannot conclude that management has misapplied or unfairly applied written policy.

One of the grievant's primary concerns appears to be that the agency has not consistently followed its stated institutional practice of requiring employees to submit written requests for training in order to be considered for elective training opportunities. The grievant claims that while she attempted to conform to this institutional requirement, other employees who have not requested training are nevertheless granted training opportunities. The grievant appears to be correct that management instructed its correctional officers to submit written requests if they desire elective training. However, this instruction was never intended to divest management's ability to select for certain training individuals who may not have signed up for that particular training.⁴ According to management, institutional need has been and remains the primary factor driving decisions regarding training selection. Thus, while management attempts to take into consideration employees' requests for training, management cannot be limited by the particular training requests of a given individual.⁵

The grievant also raises a general concern that management has unfairly excluded her from receiving elective training because candidates for training are purportedly selected through nepotism (favoritism). Management is afforded wide discretion in making the determination of who receives elective training. So long as the agency does not base its decision on an impermissible factor, such as civil-rights based discrimination, retaliation for engaging in a protected activity, or nepotism, the agency's decision cannot be overturned. While the grievant claims that management engaged in nepotism, she has offered no evidence that her non-selection for training was based on nepotism or any other impermissible factor.

It should be noted that management concedes that in the past, it could have done a better job of cataloging employee training requests. However, in an effort to remedy previous shortcomings and more efficiently maintain employee requests, the agency has

⁴ Essentially, the written request requirement was intended to remedy the allegation that some individuals had been denied training opportunities. The written request requirement would presumably help to ensure that individuals were not *inadvertently* overlooked.

⁵ If the agency was able to select candidates for training only among those who had signed up for a particular class, it could potentially find itself short eight employees with the needed skills where an insufficient number of individuals signed up for a particular class.

instituted a new computer database to catalog employee requests for classes. Again, while management attempts to take into consideration employee requests for training, there is no state, agency, or institutional policy that limits management's selection to only those individuals who signed up for a particular class.

For all of the above reasons, this grievance does not qualify for hearing.

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

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